IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.264 OF 2006

Brihanmumbai Municipal Corporation
thru' the General Manager,
BEST Undertaking ..Petitioner.

Vs.

Yatish Sharma & Ors. ..Respondents.

....

Mr. Harinder Toor with Mr. J.S. Saluja i/b M/s. Crawford Bayley & Co. for the Petitioner.
None for the Respondents.

....

CORAM: **DR. D.Y. CHANDRACHUD, J.**

18th January, 2007.

ORAL JUDGMENT :

1. The First and the Second Respondents are owners of a factory in which ice cream is manufactured at 131 and 138, C.P. Tank Road, Mumbai 400 004. Initially the unit of the aforesaid consumers was supplied with electricity through two meters being meter Nos. L 770872 and E 992866. The applicable tariff under which the consumers were billed was the industrial GP-1 tariff. On 15th January, 2000 the consumers in the present case made an application for the installation of an electronic meter and for change of the tariff from GP-1 to GP-2 on the ground that the

existing consumption which was more than 3000 units per month was likely to increase. On 19th January, 2000 the two existing conventional meters were replaced by an electronic meter bearing No. P 991370. The tariff was changed from GP-1 to GP-2. Between 19th January, 2000 and 27th May, 2000 the readings of the new electronic meter were not taken by the Petitioner or its concerned officials. The explanation of the Petitioner is that the Electronic Data Processing (EDP) Department keeps a record of meters in consumption and it is only after a new meter is recorded with the EDP Department that appropriate cards with new meter numbers are issued to the meter readers. This process takes a few months to be completed. Whatever be the explanation, the factual position is that no meter reading was taken between January and May 2000. On 27th May 2000 a site inspection was carried out at which it was revealed that the electronic meter was found to have stopped and there was no display thereon. The electronic meter was replaced on the same day by another electronic meter bearing No. F 980673. The consumers were informed prior to taking the said action. The replaced meter has thereafter functioned satisfactorily.

2. Between the months of January and May 2000, in the absence of a meter reading, the consumers were billed on an assumed basis. The billing was on the following basis.

Month	Units Billed
January, 2000	325
February, 2000	350
March, 2000	330
April, 2000	330
May, 2000	330

3. The case of the Petitioner is that during the immediately preceding period of 341 days prior to the installation of an electronic meter on 19th January, 2000, the average monthly consumption recorded on the conventional meters was 1992 kwh units. Similarly, when a new electronic meter was installed on 27th May, 2000 (P 980673) in replacement of P 991370, the average monthly consumption during the period of 370 days subsequent to the installation of the meter worked out to 3621 kwh units.

4. A supplementary bill was raised by the Petitioner for the period from 19th January, 2000 to 27th May, 2000 on the basis of the average taken on 3621 kwh units per month. This average as noted above was the average monthly consumption recorded on the new meter, P 980673 between the period 27th May, 2000 and 1st June, 2001. By the supplementary bill a demand of Rs. 78,187.17 was raised on the consumers and debited to the account in the bill for the month of April, 2004.

5. The consumers in the present case approached the Consumer Grievance Reddressal Forum which has been constituted under the provisions of Section 42(5) of the Electricity Act, 2003. The Forum passed an order (Exhibit A) directing the Petitioner to restrict the amendment of the bill to a period of three months based upon an average to be taken of the period prior to the disputed period. In holding so, the Forum relied upon a directive of the Maharashtra Regulatory Energy Commission dated 23rd February, 2005. The consumers thereupon moved the Third Respondent, who is the Ombudsman appointed under Section 42 (6) of the Electricity Act 2003 read with Rule 272. The Ombudsman by an order dated 24th August, 2005 set aside the

order of the Grievance Redressal Forum and came to the conclusion that the Undertaking was not justified in raising a supplementary bill. The Ombudsman held that since the supplementary bill was raised after a period of four years "from the date when it first became due", the amount was not recoverable under the provisions of Section 56(2) of the Act.

6. Sub section (1) of Section 56 of the Electricity Act 2003 empowers the licensee, or as the case may be, a generating company to cut off the supply of electricity where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of the supply transmission or distribution or wheeling of electricity to him. Sub section (2) of Section 56, however, provides as follows :

> "(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrears of charges for electricity supplied and the licensee shall not cut off the supply of the electricity."

7. The issue which arises before the Court depends upon

the interpretation of the words “when such sum became first due”. The Ombudsman has held that the arrears for consumption become due immediately on the usage of energy and are billed on the dates prescribed according to the billing cycle. The conclusion of the Ombudsman therefore is that since the charges for electricity became due immediately upon the usage of energy, the supplementary bill raised in August 2004 for the disputed period between January and May 2000 was barred under sub section (2) of Section 56. In assailing the finding arrived at by the Ombudsman, Counsel appearing for the Petitioner submitted that while the liability to pay for electricity consumed is occasioned by the consumption of electricity, the sum payable becomes due from the consumer only upon the presentation of the bill. The power of disconnection under subsection (1) of Section 56 is linked to a negligent omission to pay a charge for electricity or any sum other than a charge for electricity due from the consumer to a licensee. It was urged that unless a bill is presented by the licensee to the consumer, there is no occasion for the sum payable being due. This interpretation, it was submitted, is fortified by the subsequent part of sub section (2) under which an exception is carved out where the sum has been shown continuously as recoverable as

arrears of charges for electricity supplied. It was submitted that the words "shown continuously as recoverable" must obviously refer to the subsequent bills in which the arrears are shown to be recoverable. Reliance has also been placed before the Court on the provisions of the Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005, more particularly Regulation 15 dealing with billing. Finally, the attention has been drawn to a judgment of the Delhi High Court in **H. D. Shourie v. Municipal Corporation of Delhi** [1] where expression "due" which occurred in Section 24 of the Electricity Act, 1910 came to be construed.

8. The reference to a charge for electricity due from a person to the licensee or, a generation company occurs in two contexts in the provisions of Section 56. The first context is sub section (1) of Section 56 in which a neglect to pay a charge for electricity due to a licensee or a generating company can form the basis of a disconnection of supply of electricity if a notice of 15 clear days is given. The second context is sub section (2) of Section 56 in which the recovery of a sum due from the consumer

1 AIR 1987 Delhi 219.

under the section is restricted to a period of two years from the date when such sum first became due. In construing the expression “due”the interpretation that is to be placed must be harmonized so as to be applicable both in the context of sub section (1) and sub section (2) of Section 56. A sum cannot be said to be due from the consumer unless a bill for the electricity charges is served upon the consumer. Any other construction would give rise to a rather anomalous or absurd result that a disconnection of supply would be contemplated even without the service of a bill. Though the liability of a consumer arises or is occasioned by the consumption of electricity, the payment falls due only upon the service of a bill. Thus, for the purposes of sub section (1) and sub section (2) of Section 56, a sum can be regarded as due from the consumer only after a bill on account of the electricity charges is served upon him. In fact, under the later part of sub section (2) of Section 56 an exception is carved out to the principle that no sum due from the consumer shall be recoverable after a period of two years from the date when such sum became due. The exception is that when such sum is shown continuously as recoverable as arrears of charges for electricity supply. In other words, where a bill continues to show the sum

recoverable as arrears of charges for electricity supplied, the sum due can fall for recovery even after the expiry of a period of two years.

9. The interpretation which has been placed above on the expression "sum due" has also been accepted in a judgment of a Learned Single Judge of the Delhi High Court in **H. D. Shourie' s case.** Mr. Justice B. N. Kirpal (as the Learned Chief Justice then was) construed the provisions of Section 24(1) of the earlier Electricity Act, 1910 under which an enabling provision was made for disconnection of electricity supply if a person neglected to pay any charge for energy which is due from him. The Learned Judge held that the expression "due" in Section 24 would not refer to the consumption of electricity but as being payable after a valid bill has been sent to the consumer. The Court held as follows :

> "As I read S. 24 of the Electricity Act and S. 283 of the Corporation Act, it appears to me that the amount of charges would become due and payable only with the submission of the bill and not earlier. As has been mentioned herein above, it is the bill which stipulates the period within which the charges are to be paid. The period which is provided is not less than 15 days after the receipt of the bill. If the word "due" in S. 24 is to mean consumption of electricity, and if the argument of the learned counsel for the petitioner is correct, it would mean that electricity charges would become due and

> payable the moment electricity is consumed and if charges in respect thereof are not paid then even without a bill being issued a notice of disconnection would be liable to be issued under S. 24. This certainly could not have been the intention of the Legislature. Section 24 gives a right to the licensee to issue not less than 7 days' notice if charges due to it are not paid. The word “due” in this context must mean due and payable after a valid bill has been sent to the consumer. It cannot mean 7 days' notice after consumption of the electricity and without submission of the bill. Even though the liability to pay may arise when the electricity is consumed by the petitioner, nevertheless it becomes due and payable only when the liability is quantified and a bill is raised. Till after the issue and receipt of the bill the respondents have no power or jurisdiction to threaten disconnection of the electricity which has already been consumed but for which no bill has been sent.”

10. Section 50 of the Electricity Act, 2003 empowers the State Commission to specify an electricity supply code to provide for recovery of electricity charges, intervals for billing of electricity charges, disconnection of supply of electricity for non-payment, restoration of supply and other cognate matters. In exercise of the power conferred by Section 50 the State Commission has framed the Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005. Regulation 15 provides for billing. Regulation 15.2 provides for the details of a bill. A bill is inter alia required to provide information of

the date of the bill and the due date of payment. The due date of payment is therefore prescribed in the bill itself and obviously it is upon the dispatch of the bill that a due date is expected to occur. The bill is also required to provide for the arrears. The Regulations which were enacted in 2005 provide a clear indicator in respect of the due date for the payment of a bill. Clause 15.5.1 provides thus :

> "15.5.1 The due date for the payment of a bill shall be mentioned on the bill and such due date shall be not less than twenty-one days from the bill date in the case of residential and agricultural consumers, and not less than fifteen days in the case of other consumers."

11. Clearly, therefore the Regulations demonstrate that a bill falls due for payment on the date mentioned in the bill which is not to be less than 21 days and 15 days respectively from the bill date in the case of residential and agricultural consumers on one hand and the other consumers on the other hand. The Ombudsman was therefore clearly in error in postulating that the claim was barred on the ground that the arrears for consumption became due immediately on the usage of energy. This finding is ex facie contrary to the provisions of sub section (2) of Section 56. The

provisions contained in the Regulation fortify this conclusion which independently emerges on a plain and grammatical interpretation of the provisions of Section 56.

12. In the present case, it was revealed that during the period between 19th January, 2000 and 27th May, 2000 the electronic meter that was installed at the premises of the Respondent – consumers was found to have stopped and there was no display whatsoever on the electronic meter. The Undertaking proceeded to prepare a supplementary bill for the said period on the basis of the average consumption recorded on the new meter that was thereafter installed during the period from 21st May, 2000 to 1st June, 2001. In exercise of the power conferred by Section 50 as already noted, the State Commission has framed Regulations in 2005. The Regulations have undoubtedly come into force after the disputed period to which the controversy relates. Regulation 15.4 deals with a defective meter and enunciates that in the case of a defective meter the amount of the consumers bill shall be adjusted for the maximum period of three months prior to the month in which the dispute has arisen. The second proviso to Regulation 15.4.1 lays down that in case the

meter has stopped recording, the consumer will be billed for the period for which the meter has stopped recording, upto a maximum period of three months, "based on the average metered consumption for twelve months immediately preceding the three months prior to the month in which the billing is contemplated". In my view, since the State Commission as a delegate of the legislature has framed Regulations, albeit in 2005, the ends of justice would be met if a direction is issued in the present case to the effect that the Petitioner would be at liberty to bill the Respondent – consumer upto a maximum period of three months, based on the average metered consumption for twelve months immediately preceding the three months as envisaged in Regulation 15.4.1. The Undertaking shall carry out the aforesaid exercise and shall issue a fresh supplementary bill to the consumer.

13. Before concluding, it would be necessary to record that at the stage of admission, the First and Second Respondents had waived the service of the rule. The First and Second Respondents have remained absent at the hearing. The Petition has accordingly been heard. No reply has been filed to the Petition. The Petition is

accordingly allowed. The order of Ombudsman dated 24th August, 2005 is quashed and set aside and shall stand substituted by the directions issued herein above. In the circumstances of the case, there shall be no order as to costs.